

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL.**

Writ Petition No. 142 (S/S) of 2001

Old Number

Writ Petition No. 18134 of 1991

Krishna Lal Anand,
S/o Sri Khairati Lal,
R/o F-21, Adarsh Colony,
Rudrapur,
Nainital.

.....Petitioner

Versus

1. The District Inspector of Schools, Nainital.
2. Manager, Janta Inter College, Rudrapur, Nainital.
3. Principal, Janta Inter College, Rudrapur, Nainital.

.....Respondents

Hon'ble M.M. Ghildiyal, J.

Head Sri K.N. Joshi, learned counsel for the petitioner and Sri Paresh Tripathi, learned counsel for State of Uttaranchal on behalf of respondents

The petitioner had filed the present writ petition for the followings reliefs:

- (a) *issue a writ, order or direction in the nature of Mandamus directing the respondents to treat the petitioner as in service and to quash the orders dated 12.07.1990, 01.10.1990 and telegram (Annexure No. 10 to the writ petition).*
- (b) *issue a writ, order or direction in the nature of Mandamus directing the respondents to pay the salary to the petitioner to effect from July 09, 1990 to date.*
- (c) *to issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the present circumstances of the case.*
- (d) *to award the cost of the petition to the petitioner.*

Brief facts as narrated in the writ petition are that petitioner was appointed as Assistant Clerk in Janta Inter College, Rudrapur, Nainital. Neither any date of appointment of the petitioner is mentioned nor any appointment letter is annexed along with writ petition. Only to prove his appointment petitioner has annexed a certificate dated 15.03.1990 issued by respondent no. 3, which says that petitioner was working as Assistant Clerk since April, 1974 (Annexure No. 1 to the writ petition).

From the perusal of the record, it appears that petitioner applied for leave with effete from 01.05.1986 to 05.08.1986 and the same was sanctioned by the Institution as leave without pay. Petitioner instead of joining the Institute on 06.08.1986 requested for extension of his leave upto 05.11.1987. This leave was sanctioned to the petitioner with a condition that he will join his duties on 06.11.1986 positively. Thereafter, petitioner extended his leave again and again i.e. from 06.11.1986 to 05.11.1987, from 06.11.1988, from 05.11.1988 from 06.11.1986 to 05.11.1989 and from 06.11.1989 to 15.07.1990.

On 09.07.1990 petitioner presented himself before respondent no. 3 for joining for his duties but he was not permitted to join as early by telegram the petitioner was informed that since the services of the petitioner have already been terminated there is no question of permitting him to join the Institution.

It was also stated in the letter dated 12.07.1990 issued by Manager that after termination petitioner's services, post was declared vacant and the same has already been filled up by way of promotion and promotion has been approved by District Inspector of Schools.

Petitioner has not impleaded the person, who has been promoted to the post of Assistant Clerk, which was being held by the petitioner earlier.

The services of the petitioner have been terminated, as he was dead wood for the Institution. Even, in case, the submission of the petitioner is accepted and an order is passed in favour of the petitioner, the order will certainly effect the right of the person, who has been promoted on the post of Assistant Clerk, which was earlier being held by the petitioner and the said person is continuously working on the post before 1990 and that person has not been impleaded as respondents.

In the circumstances sated above, no order can be passed in favour of the petitioner. Writ petition is not maintainable on the ground of non joinder of necessary party. The writ petition is devoid of merit, as such, is dismissed. No order as to costs.

(M.M. Ghildiyal, J.)

July 31, 2006

SKSharma